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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 04 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Marin Johnson

S Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a patient safety officer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in Public Health from Harvard University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest

by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The director did not contest that the petitioner works in an area of intrinsic merit, public health for home care patients, and that the proposed benefits of her work, reducing the national rate of acute care hospitalizations among home care patients, would be national in scope. At issue is whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. [redacted] division of New York's Health and Hospitals Corporation (HHC) where the petitioner works, asserts that the petitioner participated in an intensive and exclusive eight-day training course at the Institute of Health Care Improvement (IHI) to become a patient safety officer. [redacted] further asserts that

only four of the 500 trained are employed in the home health care arena. It cannot, however, suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

[redacted] explains that through the petitioner's leadership, HHC has been able to dramatically increase the percentage of patients who improve their oral medication management, exceeding the rates elsewhere in the nation. [redacted] further explains that the results of this improvement include fewer side effects, doctor visits and hospital admissions. Finally, [redacted] explains that the petitioner has been instrumental in providing the necessary information, counseling and feedback to patients to take their medication correctly and has the "opportunity to impact the nation at large by sharing best practices validated in her role." We have already acknowledged that the *proposed* benefits are national in scope. At issue is whether the petitioner has already demonstrated a track record of success with some degree of influence on the field as a whole. *Id.* at 219, n.6.

The record includes a joint letter from [redacted] and [redacted] performance improvement coordinators at the Island Peer Review Organization (IPRO) in New York. They indicate that the petitioner became the lead facilitator for [redacted] at Health and Home Care in November 2006, a role she took on "mid-stream." The presentation on [redacted] accomplishments in the record reports on the Wave I highlights as of December 2006, only one month after the petitioner assumed a leading role as the [redacted] facilitator for Health and Home Care, and the Wave II highlights as of June 2007. According to the joint letter, the petitioner reevaluated the program's direction and effectiveness and improved the program within one year. In addition, they explain that the petitioner "participated in IPRO sponsored educational teleconferences where best practices specific to home healthcare are shared." The joint letter does not suggest that these were national teleconferences.

[redacted] at Harvard University's Department of Health Policy and Management and one of the petitioner's professors, asserts that the petitioner led Health and Home Care to meet the five percent improvement target set by the Centers for Medicare and Medicaid Services (CMS) in February 2007, eleven months before the deadline. [redacted] explains the significance of this achievement in light of CMS' movement to a pay for performance era. The petitioner, however, according the joint letter from [redacted] and [redacted] had only been

the [redacted] lead facilitator since November 2006, just three months before Health and Home Care met its goal, according to [redacted] The [redacted] presentation referenced above indicates that the majority of the [redacted] affiliated agencies reported improvements. [redacted] further asserts that the petitioner initiated a key home health care initiative to improve the management of oral medications and notes a recent study concluding that 40 percent of nursing home admissions are due to an inability to safely manage medications at home. [redacted] explains that under the petitioner's leadership, Health and Home Care "has come to be rated above national and regional averages" for accurate medication reconciliation."

All of the above assertions relate to the petitioner's local impact. [redacted] further asserts that the petitioner "has set trends that are being replicated by other Home Health agencies across the country as evidenced by the national educational teleconferences she has been asked to participate in." [redacted] does not, however, identify one agency outside of New York that has replicated the petitioner's strategies with similar results or even committed to adopting the petitioner's strategies in the future.

The petitioner also submitted a letter from [redacted] at HHC, which she describes as the largest municipal hospital system in the nation. [redacted] explains that during the IHI course, the petitioner developed a patient safety action plan for Health and Home Care and developed a 12-month implementation plan. [redacted] further asserts that the petitioner achieved identifiable results from the plan. In addition, [redacted] explains that in the petitioner's role as a patient safety officer with Health and Home Care, "she is responsible for collaborating with the Island Peer Review Organization (IPRO)[,] the Medicare Quality Improvement Organization (QIO) for New York State, on key quality improvement initiatives to improve processes, outcomes and efficiency of care for the Medicare population." [redacted] does not assert that this collaboration has had a national influence.

[redacted] then discusses the petitioner's leading role in implementing a number of clinical initiatives within Health and Home Care and the division's participation in a demonstration collaborative for [redacted] While [redacted] does not specifically assert that [redacted] is a national program, we acknowledge that a presentation in the record reflects that [redacted] includes 175 agencies across 20 states. [redacted] next asserts that Health and Home Care also participates in the national CMS Home Health Quality Improvement (HHQI) campaign with the aim of reducing avoidable hospitalizations. [redacted] reiterates that Health and Home Care achieved the target improvement rate for February 2008 in February 2007 and "has since surpassed this target and has set a new goal for itself." [redacted] asserts that the significance of these results is apparent from the IPRO request to share her best practices with other health care organizations but does not specifically assert that such sharing occurred at the national rather than regional level. While [redacted] asserts that the petitioner's peers have adopted the petitioner's strategies in their own agencies in different parts of the country, she does not identify a specific agency that has done so.

While the letters from [redacted] and [redacted] indicate that Health and Home Care met the HHQI national campaign target in two months, by February 2007, the petitioner submitted a May 22, 2008 letter from IPRO indicating the target had been met. Consistent with this date, the petitioner's presentation about Health and Home Care initiatives reflects that while improvements occurred in January and February, Health and Home Care took five months to achieve the HHQI target of 5 percent relative improvement.

The petitioner submitted emails in the course of business. In a January 9, 2008 email, [redacted] from the Center for Home Care Policy and Research at the Visiting Nurse Service of New York (VNSNY), thanks the petitioner for a "terrific presentation at the [redacted] call." [redacted] then invites the petitioner to serve as a [redacted] by using the attached template to share good practices at Health and Home Care. A subsequent email indicates that the petitioner accepted the role of peer champion. The record contains no evidence as to the scope of the referenced outcomes call or whether [redacted] who works for a New York entity, would share the practices at Health and Home Care nationwide.

An email from [redacted] of IPRO praises the petitioner's success story. As discussed above, IPRO is a New York entity. The email does not reference any other agency locally or nationally that has copied or otherwise emulated Health and Home Care's strategies.

An June 15, 2007 email from [redacted] a quality improvement specialist with the Northeast Health Care Quality Foundation in New Hampshire, praises the petitioner's presentation at a [redacted] learning session and asserts that the participants "at both sites in New Hampshire (for VT/NH providers) and in Maine thought the presentation was well done, thought-provoking, validating of similar experiences, and encouraging with new ideas to march forward in the effort to reduce [acute care hospitalizations]." The email does not suggest that the petitioner's presentation had a national rather than a regional audience. A June 14, 2007 email from [redacted] confirms that the presentation was only for agencies in Maine, New Hampshire and Vermont. Moreover, while the presentation was in 2007, the record contains no evidence from participants in Vermont, New Hampshire or Maine confirming that they have actually implemented any of the petitioner's strategies.

The petitioner submitted a certificate from the Home Health Quality Improvement (HHQI) National Campaign and IPRO recognizing Health and Home Care's participation in the campaign and the achievement of the campaign's goal of a 5 percent relative improvement and reduction of avoidable acute care hospitalizations (ACH). The record also includes a first prize HHC issued to Health and Home Care for improving the management of oral medications in home care patients but this recognition is purely local. The certificate is signed by a representative of IPRO but not the HHQI national campaign. On September 11, 2008, Health and Home Care issued a certificate of recognition to the petitioner but only references her contributions to the agency's patients.

The petitioner's presentation about Health and Home Care, page 4, reveals that Phase 1 involved using [redacted] website resources to create an agency risk assessment and introducing the [redacted] concept to

clinical staff. Phase 3, which included joining the HHQI national campaign in January 2007, also included creating patient Emergency Care Plans based on a template from [redacted]/HHQI's best practice websites. As such, it appears the petitioner was, at least in part, merely implementing [redacted] strategies designed by someone else.

While the petitioner has presided over improvements at Health and Home Care as part of a national initiative, the record is absent any evidence of her past influence in the field as a whole. Her personal presentations appear to be limited to the Northeast region and the record does not contain a single letter from an agency outside of New York confirming that they have implemented or are in the process of implementing any of the petitioner's original ideas that are independent of the [redacted] concepts implemented at Health and Home Care but developed by [redacted]

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.